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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,115	03/12/2004	Chris J. Kiick	03226/363001	8914

32615 7590 09/19/2008  
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HOUSTON, TX 77010

EXAMINER
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NGUYEN, VAN H

ART UNIT	PAPER NUMBER
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2194

NOTIFICATION DATE	DELIVERY MODE
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09/19/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/800,115	<b>Applicant(s)</b> KIICK ET AL.	
	<b>Examiner</b> VAN H. NGUYEN	<b>Art Unit</b> 2194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-22 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This communication is responsive to the application filed 03/12/2004.

Claims 1-22 are presented for examination.

### **Oath/Declaration**

2. The Office acknowledges receipt of a properly signed Oath/Declaration submitted 03/12/2004.

### **Drawings**

3. The drawings filed 03/12/2004 are accepted by the examiner.

### **Specification**

4. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

**The abstract is objected to because it does not comply with 37 CFR § 1.72.**

(b) A brief abstract of the technical disclosure in the specification must commence on a separate sheet, preferably following the claims, under the heading "Abstract" or

“Abstract of the Disclosure.” *The sheet or sheets presenting the abstract may not include other parts of the application or other material.* The abstract in an application filed under 35 U.S.C. 111 may not exceed 150 words in length. The purpose of the abstract is to enable the United States Patent and Trademark Office and the public generally to determine quickly from a cursory inspection the nature and gist of the technical disclosure.

**Also, the abstract is objected to because it does not comply with MPEP § 608.01(b).**

*The abstract should be in narrative form* and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because the abstract **appears to be written as if it were a claim and is not in narrative form.**

### **Claim Rejections - 35 USC § 112**

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 3, “the configuration file” lacks antecedent basis.

### **Claim Rejections - 35 USC § 101**

6. 35 U.S.C. 101 reads as follows:

*Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.*

Claims 10-20 and 22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**Regarding independent claims 10 and 22**, the claim recites a “system” comprising “a kernel module,” “a modified kernel runtime loader,” and “a preload module”. As currently recited the “system” comprises only computer software elements. Thus, the claim is a program per se and does not fall within any of the four enumerated categories of patentable subject matter in section 101.

Dependent claims 11-20 are rejected for fully incorporating the deficiencies of their base claims.

### **Claim Rejections - 35 USC § 103**

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4 and 7-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Moore** (US 6769117 B2) in view of **Shearer et al.** (US 6272519 B1).

**As to claim 1:**

Moore teaches a method for loading a kernel module, comprising:  
loading a preload module into a kernel, wherein loading the preload module comprises creating a dynamic dependency list; loading the kernel module comprising a static dependency list into the kernel; triggering a hook when the static dependency list is reviewed; obtaining module information associated with the kernel module using the hook; searching for a dynamic dependency associated with the kernel module in the dynamic dependency list using the module information (see the Abstract; col.2, line 36-col.3, line 64; col.5, line 19-col.6, line 23; and col. 10, line 65-col.11, line 22).

Moore, however, does not specifically teach updating the static dependency list with the dynamic dependency to obtain an updated static dependency list if the dynamic dependency associated with the kernel module is present in the dynamic dependency list.

Shearer teaches updating the static dependency list with the dynamic dependency to obtain an updated static dependency list if the dynamic dependency associated with the kernel module is present in the dynamic dependency list (see col.7, lines 13-42; col.10, line 1-col.11, line 15; see also, Figs. 7a-7e).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Moore with Shearer it would have dynamically altered operating system kernel resource control tables without the need to shut-down and reboot

the computer system to invoke the changes.

**As to claim 2:**

Moore teaches defining a configuration file, wherein the configuration file is read by the preload module to create the dynamic dependency list (see col.5, line 19-col.6, line 23; and col. 10, line 65-col.11, line 22).

**As to claim 3:**

Moore teaches updating the configuration file to obtain an updated configuration file; unloading the preload module from the kernel; re-loading the preload module into the kernel, wherein re-loading the preload module comprises reading the updated configuration file to generate an updated dynamic dependency list (see col.5, line 19-col.6, line 23; and col. 10, line 65-col.11, line 22).

**As to claim 4:**

Moore teaches installing the hook using the preload module (see col.5, line 19-col.6, line 23).

**As to claim 7:**

Moore teaches the hook is installed in a kernel runtime loader (see col.5, line 19-col.6, line 23).



**As to claim 8:**

Moore teaches the kernel module comprises a flag indicating that a kernel symbol may have multiple definitions (see col.7, lines 23-59).

**As to claim 9:**

Shearer teaches updating the static dependency list comprises adding the dynamic dependency to the static dependency list (see Figs. 7a-7e).

**As to claim 10:**

Refer to the discussion rejection of claim 1 above for rejection.

**As to claim 11:**

Moore teaches a configuration file configured to define a dynamic dependency, wherein the configuration file is used to generate the dynamic dependency list (see col.5, line 19-col.6, line 23; and col. 10, line 65-col.11, line 22).

**As to claim 12:**

Moore teaches the configuration file is read by the preload module when the preload module is loaded (see col.5, line 19-col.6, line 23; and col. 10, line 65-col.11, line 22).

**As to claim 13:**

Moore teaches the preload module is unloaded and reloaded when the configuration file is modified (see col.5, line 19-col.6, line 23; and col. 10, line 65-col.11, line 22).

**As to claim 14:**

Moore teaches an interposer module configured to provide a new kernel symbol definition for the kernel symbol, wherein the kernel module is dependent upon the interposer module (see col.5, line 19-col.6, line 23; and col. 10, line 65-col.11, line 22).

**As to claim 15:**

Moore teaches a configuration file configured to define the dynamic dependency, wherein the configuration file indicates that the kernel module is dependent upon the interposer module (see col.5, line 19-col.6, line 23; and col. 10, line 65-col.11, line 22).

**As to claim 16:**

Moore teaches the kernel symbol is resolved using the new kernel symbol definition (see col.5, line 19-col.6, line 23; and col. 10, line 65-col.11, line 22).

**As to claim 17:**

Moore teaches the interposer module comprises a reference count (see col.2, lines 42-56 and col.5, line 55-col.6, line 23).

**As to claim 18:**

Moore teaches the kernel module comprises a flag indicating that a kernel symbol may have multiple definitions (see col.7, lines 23-59).

**As to claim 19:**

Moore teaches the preload module searches the dynamic dependency list using kernel module information to determine whether the dynamic dependency associated with the kernel module is present (see col.5, line 19-col.6, line 23; and col. 10, line 65-col.11, line 22).

**As to claim 20:**

Moore teaches updating the static dependency list comprises adding the dynamic dependency to the static dependency list.

**As to claim 21:**

The rejection of claim 1 above is incorporated herein in full. Additionally, the claimed processor, a memory, a storage device, and a computer display are inherent to the system of Moore.

**As to claim 22:**

Refer to the discussion rejection of claim 1 above for rejection.

### **Allowable Subject Matter**

8. Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, subject to a final search.

### **Conclusion**

9. The prior art made of record, see PTO 892, and not relied upon is considered pertinent to applicant's disclosure. Applicant should review these references carefully before responding to this office action.

### **Contact Information**

10. Any inquiry or a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VAN H. NGUYEN whose telephone number is (571) 272-3765. The examiner can normally be reached on Monday-Thursday from 8:30AM 6:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MENG-AI AN can be reached at (571) 272-3756.

Art Unit: 2194

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/VAN H NGUYEN/  
Primary Examiner, Art Unit 2194**